

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Pine Telephone T.V.	)	CSR-8878-A
	)	Docket No. 14-59
For the Market Modification of the Television	)	
Markets for KBOI-TV and KTVB of Boise, Idaho;	)	
KIVI-TV and KTRV-TV of Nampa, Idaho; and	)	
KNIN-TV of Caldwell, Idaho	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 6, 2014**

**Released: August 6, 2014**

By the Senior Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. Pine Telephone T.V. (“Pine”) filed the above-captioned petition for special relief seeking to add the cable community of Halfway, located in Portland, Oregon, to the television markets of stations KBOI-TV and KTVB of Boise, Idaho; KIVI-TV and KTRV-TV of Nampa, Idaho; and KNIN-TV of Caldwell, Idaho.<sup>1</sup> The Petition is unopposed. For the reasons discussed below, we grant the Petition with respect to KBOI-TV and KTVB, and deny the Petition with respect to KNIN-TV, KIVI-TV, and KTRV-TV.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act of 1934, as amended (the “Act”), and implementing rules adopted by the Commission, commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within their markets.<sup>2</sup> A station’s market is its “designated market area,” or DMA, as defined by Nielsen Media Research.<sup>3</sup> A DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns. Essentially, each county in the United States is allocated to a market based on which home-market stations receive a preponderance of total viewing hours in the county. For purposes of this calculation, the total television viewing audience attained by a broadcast station is considered, regardless of the delivery technology used to receive its signal – whether the signal is received over-the-air, or via

<sup>1</sup> Petition for Special Relief of Pine Telephone T.V., filed Apr. 7, 2014, at iii, 1 (“Petition”).

<sup>2</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-2977 (1993) (“*Must Carry Order*”).

<sup>3</sup> Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station’s market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. *See* 47 U.S.C. §534(h)(1)(C). Section 76.55(e) requires that a commercial broadcast television station’s market be defined by The Nielsen Company’s DMAs. 47 C.F.R. § 76.55(e); *see Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) (“*Modification Final Report and Order*”).

cable, wireless cable, DBS, SMATV or OVS systems.<sup>4</sup>

3. Under the Act, however, the Commission is also directed to consider changes in market areas. Section 614(h)(1)(C) provides that the Commission may:

with respect to a particular television broadcast station, include additional communities within its television market or exclude communities from such station's market to better effectuate the purposes of this section.<sup>5</sup>

In considering such requests, the 1992 Cable Act provides that:

the Commission shall afford particular attention to the value of localism by taking into account such factors as -

- (I) whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) whether the television station provides coverage or other local service to such community;
- (III) whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community;
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.<sup>6</sup>

4. In adopting rules to implement this provision, the Commission indicated that requested changes should be considered on a community-by-community basis rather than on a county-by-county basis, and that they should be treated as specific to particular stations rather than applicable in common to all stations in the market.<sup>7</sup> In the *Modification Final Report and Order*, the Commission, in an effort to promote administrative efficiency, adopted a standardized evidence approach for modifications that requires the following evidence be submitted:

- (1) A map or maps illustrating the relevant community locations and geographic features, station transmitter sites, cable system headend locations, terrain features that would affect station reception, mileage between the community and the television station transmitter site, transportation routes and any other evidence contributing to the scope of the market.
- (2) Grade B contour maps<sup>8</sup> delineating the station's technical service

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<sup>4</sup> For a more complete description of how counties are allocated, see Nielsen Media Research's *Nielsen Station Index: Methodology Techniques and Data Interpretation*.

<sup>5</sup> 47 U.S.C. § 534(h)(1)(C).

<sup>6</sup> *Id.*

<sup>7</sup> *Must Carry Order*, 8 FCC Rcd 2965, 2977 n.139.

<sup>8</sup> Service area maps using Longley-Rice (version 1.2.2) propagation curves may also be included to support a technical service exhibit. The Longley-Rice model provides a more accurate representation of a station's technical coverage area because it takes into account such factors as mountains and valleys that are not specifically reflected in a traditional Grade B contour analysis. In situations involving mountainous terrain or other unusual geographic

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area<sup>9</sup> and showing the location of the cable system headends and communities in relation to the service areas.

(3) Available data on shopping and labor patterns in the local market.

(4) Television station programming information derived from station logs or the local edition of the television guide.

(5) Cable system channel line-up cards or other exhibits establishing historic carriage, such as television guide listings.

(6) Published audience data for the relevant station showing its average all day audience (*i.e.*, the reported audience averaged over Sunday-Saturday, 7 a.m.-1 a.m., or an equivalent time period) for both cable and noncable households or other specific audience indicia, such as station advertising and sales data or viewer contribution records.<sup>10</sup>

5. Petitions for special relief to modify television markets that do not include the above evidence shall be dismissed without prejudice and may be re-filed at a later date with the appropriate filing fee. The *Modification Final Report and Order* provides that parties may continue to submit whatever additional evidence they deem appropriate and relevant.

6. In the *Carriage of Digital Television Broadcast Signals First Report and Order* (“DTV Must Carry Report and Order”), the Commission concluded that under Section 614(a) of the Act, digital-only television stations had mandatory carriage rights, and amended its rules to reflect this.<sup>11</sup> The Commission also clarified its framework for analyzing market modifications for digital television stations.<sup>12</sup> It found that the statutory factors in Section 614(h), the current process for requesting market modifications, and the evidence needed to support such petitions, would be applicable to digital television

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features, Longley-Rice propagation studies can aid in determining whether or not a television station actually provides local service to a community under factor two of the market modification test.

<sup>9</sup> While the Grade B contour defined an analog television station's service area, *see* 47 C.F.R. § 73.683(a), with the completion of the full power digital television transition on June 12, 2009, there are no longer any full power analog stations. Instead, as set forth in Section 73.622(e), a station's DTV service area is defined as the area within its noise-limited contour where its signal strength is predicted to exceed the noise-limited service level – which for VHF stations is 28 dBu. *See* 47 C.F.R. § 73.622(e). Accordingly, the Commission has treated a digital station's noise limited service contour as the functional equivalent of an analog station's Grade B contour. *See Report To Congress: The Satellite Home Viewer Extension and Reauthorization Act of 2004; Study of Digital Television Field Strength Standards and Testing Procedures*, 20 FCC Rcd 19504, 19507 ¶ 3, 19554 ¶ 111 (2005); *Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, Report and Order, 20 FCC Rcd 17278, 17292 ¶ 31 (2005). *See also Lenfest Broadcasting, LLC*, 19 FCC Rcd 8970, 8974 ¶ 7 n.27 (2004) (“For digital stations operating on channels 14-69 [UHF stations], for market modification purposes the 41 dBu DTV service area contour is the digital equivalent of an analog station's Grade B contour.”).

<sup>10</sup> 47 C.F.R. § 76.59(b).

<sup>11</sup> *See* 16 FCC Rcd 2598, 2606 ¶ 15, 2610 ¶ 28 (2001); 47 C.F.R. § 76.64(f)(4).

<sup>12</sup> *See* 16 FCC Rcd at 2635-36 ¶¶ 84-85. The Commission affirmed that for digital signal carriage issues, it would continue to rely on the Nielsen Company's market designations, publications, and assignments it used for analog signal carriage issues. *See id.* at 2636 ¶ 85.

modification petitions.<sup>13</sup> While the Commission presumed the market of a station's digital signal would be coterminous with that station's market area for its prior analog signal, it recognized that the technical coverage area of a digital television signal may not exactly replicate the technical coverage area of its former analog television signal.<sup>14</sup> Therefore, in deciding DTV market modifications, the Commission would take changes in signal strength and technical coverage into consideration, on a case-by-case basis.

### III. DISCUSSION

7. Pine is a newly formed cable television venture of Pine Telephone and has obtained a franchise to establish a cable system in Halfway, Oregon ("Halfway"), which is located in the Portland, Oregon Designated Market Area ("DMA").<sup>15</sup> The Petition requests that the markets for five television broadcast stations be modified to include the cable community of Halfway so that Pine may carry them as local stations on its cable system.<sup>16</sup> The five stations at issue in this Petition are KBOI-TV, KTVB, KIVI-TV, KTRV-TV, and KNIN-TV (collectively "the Boise Stations").<sup>17</sup> The Boise Stations all serve the Boise, Idaho DMA.<sup>18</sup>

8. The first statutory factor we consider in determining whether to grant a market modification petition is "whether the station, or other stations located in the same area have been historically carried on the cable system or systems within such community."<sup>19</sup> Pine states that no cable system presently serves the community of Halfway.<sup>20</sup> The exhibits provided by Pine indicate that Charter Communications provided cable service to Halfway from 1999 to 2006 and carried some of the Boise Stations on its system.<sup>21</sup> Prior to Charter's service, Halfway was served by Falcon Cable which also carried KBOI-TV, KIVI-TV, and KTVB in 1997 and marketed them as the local broadcast channels.<sup>22</sup>

9. The second statutory factor is "whether the television station provides coverage or other local service to such community."<sup>23</sup> Pine provides that Halfway is located close to the noise-limited contours of the Boise Stations' signals.<sup>24</sup> Pine also states that the Boise Stations are closer geographically to Halfway than the stations in the Portland DMA.<sup>25</sup> Pine states that the Boise Stations provide extensive local news, weather, and sports programming of interest to Halfway residents.<sup>26</sup> Finally, Pine states that

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<sup>13</sup> See *DTV Must Carry Report and Order*, 16 FCC Rcd at 2636 ¶ 85.

<sup>14</sup> See *id.* In adopting technical rules for the digital transmission of broadcast signals, the Commission attempted to ensure that a station's digital over-the-air coverage area would replicate as closely as possible its former analog coverage area. See *id.* at 2636 ¶ 85 n.254, citing *Sixth DTV Report and Order*, 12 FCC Rcd 14588, 14605 ¶ 29 (1997).

<sup>15</sup> Petition at 2-4, Exhibit 4.

<sup>16</sup> *Id.* at 1-2, 4.

<sup>17</sup> *Id.* at iii.

<sup>18</sup> *Id.*

<sup>19</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(I).

<sup>20</sup> See Petition at 8, Exhibit 2.

<sup>21</sup> See *id.* But see Television and Cable Factbook (Halfway, Oregon), Volumes 2008, 2007, 2006, 2005, 2000, 1998, 1991, and 1990 (showing that only KBOI-TV, KIVI-TV, and KTVB have been carried by cable systems in Halfway). The cable industry guides also indicate that Charter's cable service in Halfway continued until 2008. See Television and Cable Factbook (Halfway, Oregon), Volume 2008.

<sup>22</sup> See Petition at 8, Exhibit 6. Pine notes that KBOI-TV was previously designated as KBCI. *Id.* at 8, n. 21.

<sup>23</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(II).

<sup>24</sup> Petition at 8-9.

<sup>25</sup> *Id.* at 9-10.

Halfway has strong economic ties to the Boise DMA based on labor patterns and Boise services relied upon by Halfway residents.<sup>27</sup>

10. The third statutory factor is “whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interest to the community.”<sup>28</sup> Pine states that, aside from the Boise Stations, no other source has provided terrestrial commercial broadcast television coverage to Halfway.<sup>29</sup> Pine asserts that Halfway’s location is such that no other commercial stations are able to cover the community due to the mountainous terrain and that Halfway only receives a noncommercial PBS broadcast signal via a translator station.<sup>30</sup>

11. The fourth statutory factor concerns “evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.”<sup>31</sup> Pine states that Nielsen does not have viewership data for the Boise Stations in Halfway.<sup>32</sup> Pine does not believe there is any published viewership data for Halfway because Halfway has been without cable service since 2006 and without all but one commercial television broadcast signal since 2013.<sup>33</sup> Pine argues that because the Boise Stations are the only commercial broadcast stations to have ever served Halfway, they are likely to have significantly viewership in Halfway.<sup>34</sup>

12. With regard to the first statutory factor, we find that there is evidence of historical carriage only for KBOI-TV, KIVI-TV, and KTVB in Halfway. In addition to the exhibits provided by Pine, a review by the Commission of cable industry guides shows that KBOI-TV, KIVI-TV, and KTVB have been carried on cable systems serving Halfway since 1990 and carriage remained until the discontinuation of cable services in the community.<sup>35</sup> However, despite Pine’s claims that cable systems have carried all of the Boise Stations, our review of cable industry guides reveals that neither KNIN-TV nor KTRV-TV has been carried by cable systems in Halfway.<sup>36</sup> Notably, no television station from the Portland DMA is listed except for the noncommercial PBS affiliate KOPB-TV.<sup>37</sup> Because cable systems in Halfway have carried KBOI-TV, KIVI-TV, and KTVB for as long as there has been cable service in Halfway, we find that these stations have demonstrable historic carriage, whereas KNIN-TV and KTRV-

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<sup>26</sup> *Id.* at 10-11.

<sup>27</sup> *Id.* at 11-13.

<sup>28</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(III)

<sup>29</sup> Petition at 13.

<sup>30</sup> *Id.* at Exhibit 2, ¶ 4.

<sup>31</sup> 47 U.S.C. § 534(h)(1)(C)(ii)(IV)

<sup>32</sup> Petition at 14.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at Exhibits 2, 3, 5; *see* Television and Cable Factbook (Halfway, Oregon), Volumes 2008, 2007, 2006, 2005, 2000, 1998, 1991, and 1990.

<sup>36</sup> *See* Petition at Exhibit 2, ¶ 5; Television and Cable Factbook (Halfway, Oregon), Volumes 2008, 2007, 2006, 2005, 2000, 1998, 1991, and 1990.

<sup>37</sup> *See* Television and Cable Factbook (Halfway, Oregon), Volumes 2008, 2007, 2006, 2005, 2000, 1998, 1991, and 1990 (listing KBOI-TV, KIVI-TV, KTVB, and KOPB-TV as the only off-air programming carried by cable systems in Halfway).

TV do not.<sup>38</sup>

13. With regard to the second statutory factor, we do not find that Pine has demonstrated that the second factor weighs in favor of market modification. The contour maps show that while Halfway is close to the signal contours of the Boise Stations, it is located outside these signal coverage areas and would not receive an off-air signal from the stations.<sup>39</sup> Furthermore, Pine has provided little evidence regarding the Boise Stations' programming of interest to Halfway residents. Pine provides twenty news stories from only KBOI-TV and KTVB.<sup>40</sup> Contrary to Pine's claim that the Boise Stations cover events that "directly involve Halfway," many of the stories provided as evidence seem only marginally related to the community.<sup>41</sup> However, we note that Halfway is a small remote, rural community isolated from Portland by distance and terrain.<sup>42</sup> We also note that the Boise Stations are much closer geographically to Halfway than stations in Portland.<sup>43</sup> Also, the Portland stations served with the Petition by Pine apparently do not object to assertions that only the Boise Stations serve Halfway. Therefore, while we do not find that the second factor weighs in favor of the Petition, we do not consider it an absolute bar to modification either.

14. The third factor has limited applicability in this proceeding. As the Commission has said, we believe this criterion was intended to enhance a station's claim where it could be shown that other stations do not serve the communities at issue.<sup>44</sup> Pine states that no commercial television station other than the Boise Stations has ever provided service to Halfway. The record indicates that the signal of a noncommercial station, KTVR-TV, a La Grande, Oregon PBS affiliate station, currently reaches Halfway but does so via a translator station.<sup>45</sup> Furthermore, there is no indication that it provides programming directed at Halfway.<sup>46</sup> Therefore, we conclude that no current in-market stations serve Halfway in the form of signal coverage or local programming.<sup>47</sup> However, there is no evidence showing that the Boise Stations serve Halfway in terms of signal coverage or local programming either.<sup>48</sup> We do not believe the enhancement factor was meant to apply absent some showing that the out-of-market station seeking

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<sup>38</sup> See *id.* We find historical carriage in this instance despite the lack of any carriage for the past six years due to the unique circumstances of the Halfway community where no cable system has operated during the corresponding time period. See Petition at 3, 8, Exhibit 2.

<sup>39</sup> See Petition at Exhibit 1. Indeed, the Petition indicates that signals were received by Halfway only through translator stations which are being decommissioned, meaning that Halfway would not receive the off-air signals of the Boise Stations. The Commission does not grant market modifications to include communities in the markets of stations on the basis that these stations reach the communities via translators. See e.g., *Comcast Cable Comm's, LLC*, 26 FCC Rcd 14453, 14460 & n.61 (2011); *Dynamic Cablevision of Florida, Ltd.*, 12 FCC Rcd 9952, 9958 (1997); *Petition of Time Warner of New York City Cable Group*, 11 FCC Rcd 6528, 6539 (1996).

<sup>40</sup> See Petition at Exhibit 6.

<sup>41</sup> See *id.* at 10-11, Exhibit 6. Most of the stories provided merely take place in the region between Oregon and Idaho and do not concern Halfway specifically.

<sup>42</sup> Petition at 2-3.

<sup>43</sup> *Id.* at 9-10.

<sup>44</sup> See e.g., *Great Trails Broadcasting Corp.*, 10 FCC Rcd 8629, 8633, ¶ 23 (1995); *Paxson San Jose License, Inc.*, 12 FCC Rcd 17520, 17526, ¶ 13 (1997).

<sup>45</sup> Petition at Exhibit 2, ¶4.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 13 and Exhibit 2, ¶¶ 3-4. This conclusion is further supported by the cable industry guides which do not show any other commercial station being carried on cable systems in Halfway. See *Television and Cable Factbook* (Halfway, Oregon), Volumes 2008, 2007, 2006, 2005, 2000, 1998, 1991, and 1990.

<sup>48</sup> See *supra* ¶ 13.



inclusion served the community at issue.<sup>49</sup> Accordingly, because Pine has not provided adequate evidence that the Boise Stations serve or direct programming to the interest of Halfway, we decline to apply the enhancement factor in this instance despite the absence of other stations serving the community.

15. Pine presents no information with regard to the fourth factor and indicates that Nielsen does not have viewership data for the Boise Stations. However, a review by the Commission of Nielsen's data shows that KBOI-TV, KTVB, and KTRV-TV did have viewership numbers at one point in Baker County where Halfway is located.<sup>50</sup> Based on the limited information available, we agree with Pine that KBOI-TV, KTVB, and KTRV-TV are likely to have had previous viewership in Halfway.

16. We grant the Petition with respect to KBOI-TV and KTVB despite the limited evidence submitted by Pine.<sup>51</sup> We find that the unique circumstances in this case—namely the historical carriage and viewership of these stations in Halfway, combined with the subsequent absence of a local cable system in this remote community for several years, and the historical absence of any commercial Portland DMA station carriage in the community—warrant the addition of the Halfway community to the market of these stations.<sup>52</sup> We also note that these stations are significantly closer geographically to Halfway than the stations located in Portland, and, no station in the Portland DMA has opposed Pine's petition.<sup>53</sup> Furthermore, both stations had viewership in Baker County at one point. Accordingly, by virtue of their record of historical carriage, their viewership, their greater proximity to the Halfway community, and the lack of opposition by in-market stations, the markets of stations KBOI-TV and KTVB will be modified to include the remote community of Halfway.

17. We deny the Petition with respect to KNIN-TV. KNIN-TV has not been historically carried in Halfway and does not reach Halfway with an off-air signal. Pine has not provided any exhibits demonstrating that KNIN-TV provides local programming of interest to Halfway. Though Pine represents that the Boise Stations are all similarly situated, we are not prepared to grant market modification based solely on statements made collectively for all of the Boise Stations without evidence specific to KNIN-TV. Therefore, because there has been no showing of historical carriage, local service, or viewership for KNIN-TV, we deny the Petition with respect to KNIN-TV.

18. We also deny the Petition with respect to KIVI-TV and KTRV-TV. Pine has not provided exhibits demonstrating that either KIVI-TV or KTRV-TV reaches Halfway with an off-air signal or provides local programming of interest to Halfway. Pine has not established viewership in Halfway for KIVI-TV and has not demonstrated historical carriage in Halfway for KTRV-TV. Although we find that KIVI-TV has been historically carried in Halfway and that KTRV-TV likely had viewership in Halfway, we are not prepared to grant market modification based solely on one factor for each station. Therefore, because we find that the statutory market modification factors have not been sufficiently satisfied for KIVI-TV or KTRV-TV, we deny the Petition with respect to these stations.

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<sup>49</sup> See *Mediaone of Mass., Inc.*, 13 FCC Rcd 3017, 3025 ¶ 21 (1998) (explaining how signal coverage and local service influence the enhancement factor analysis).

<sup>50</sup> 2009 County Coverage Summary for Baker County, OR, Nielsen Company (showing viewership data for KBOI-TV (then designated as KBCI-TV) and KTVB). KBOI-TV and KTVB have shares of 4 and 6 and total average cumes of 10 and 40 respectively during the Sunday-Saturday, 7 a.m.-1 a.m. time period in Baker County.

<sup>51</sup> See generally *supra* text accompanying notes 36, 39-41.

<sup>52</sup> See *supra* ¶ 12.

<sup>53</sup> Petition at 9-10. While we would typically resist adding an out-of-market affiliate to in-market affiliate's market, so as to not unduly upset the concept of affiliation, the in-market Portland DMA stations are separated from Halfway by mountain ranges and significant distance and have not opposed Pine's Petition on the grounds that modification would displace their carriage.

#### IV. ORDERING CLAUSES

19. Accordingly, **IT IS ORDERED**, pursuant to Section 614(h) of the Communications Act of 1934, as amended, 47 U.S.C. § 534, and Section 76.59 of the Commission's rules, 47 C.F.R. § 76.59, that the captioned petition for special relief (CSR-8878-A), filed by Pine Telephone T.V., seeking modification of the markets of television stations KBOI-TV, KTVB, KIVI-TV, KTRV-TV, and KNIN-TV in the Portland, Oregon DMA **IS GRANTED IN PART** with respect to KBOI-TV and KTVB and **IS DENIED IN PART** with respect to KTRV-TV, KIVI-TV, and KNIN-TV.

20. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>54</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Senior Deputy Chief, Policy Division  
Media Bureau

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<sup>54</sup> 47 C.F.R. § 0.283.